

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FILED
at Santa Fe, NM

AUG 11 2006

CITIZEN ACTION,

MATTHEW J. DYKMAN
CLERK

Plaintiff,

No.

v.

CN-06-726

RIP WDS

UNITED STATES DEPARTMENT OF
ENERGY, NATIONAL NUCLEAR
SECURITY ADMINISTRATION,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel release of agency records unlawfully withheld from the Plaintiff by the Albuquerque Service Center of the National Nuclear Security Administration (NNSA), a sub-agency within the United States Department of Energy (DOE). This suit seeks to compel DOE/NNSA to produce records sought in three separate FOIA requests submitted to the agency by Plaintiff on August 30 and November 14, 2005. Plaintiff's FOIA requests sought NNSA agency records consisting of the Ten Year Comprehensive Site Plans (TYCSPs) prepared for the Sandia National Laboratory (SNL) for the Fiscal Years 2004, 2005 and 2006.

II. JURISDICTION AND VENUE

2. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue in this court is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

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III. PARTIES

4. Plaintiff Citizen Action is a non-profit public interest group whose mission is to protect the health and well-being of Albuquerque communities from the release of radioactive and hazardous contamination from a Cold War waste site known as the Mixed Waste Landfill, located at Sandia National Laboratories (SNL) in Albuquerque New Mexico. Citizen Action accomplishes this goal through education; outreach to stakeholders; and advocacy for environmental and social justice. Citizen Action has grown to a coalition of seventeen groups and many private individuals advocating for clean up of the Mixed Waste Landfill at SNL. Citizen Action is a 501 (c)(3) non-profit organization which operates under the fiscal auspices of the New Mexico Community Foundation of Santa Fe, New Mexico. Citizen Action disseminates information to the public through its website (www.radfreenm.org) which receives an average of 8,000-10,000 visits per month; through an active member list serve of approximately 1,300 members; through public venues such as town hall meetings, hearings, and public forums; bulk mailings to its members and affiliated organizations; and through its contacts with the local media.

5. Defendant UNITED STATES DEPARTMENT OF ENERGY (DOE), through the NNSA, is responsible for overseeing the operations of Sandia National Laboratories (SNL). SNL is a government-owned, contractor-operated facility of the NNSA, which is a semi-autonomous sub-agency within the DOE responsible for management of the nation's nuclear weapons facilities. DOE, through the NNSA, is responsible for responding to FOIA requests made to it concerning records regarding SNL's operations and activities and therefore is sued as a Defendant in this action.

IV. FACTS

6. On August 30, 2005, Citizen Action sent a request for information under the FOIA to the FOIA Officer in DOE's NNSA Albuquerque Service Center. The request sought a copy of the Ten Year Comprehensive Site Plan (TYCSP) prepared for the Sandia National Laboratory (SNL) for the Fiscal Year 2004. Citizen Action's FOIA request also contained a request for a fee waiver for any costs associated with processing the request.

7. On September 13, 2005, DOE's Albuquerque Operations Office acknowledged receipt of Citizen Action's August 30, 2005 FOIA request.

8. On November 14, 2005, Citizen Action sent two separate requests for information under the FOIA to the FOIA Officer in DOE's NNSA Albuquerque Service Center. The requests sought copies of the Ten Year Comprehensive Site Plans (TYCSPs) prepared for the Sandia National Laboratory (SNL) for the Fiscal Years 2005 and 2006. Citizen Action's FOIA requests also contained a request for a fee waiver for any costs associated with processing the request.

9. On November 15, 2005, DOE's Albuquerque Operations Office acknowledged receipt of Citizen Action's November 14, 2005 FOIA requests.

10. Since the time Citizen Action submitted its August 30 and November 14, 2005 FOIA requests to the DOE's NNSA Albuquerque Service Center, Citizen Action has regularly communicated by email and telephone with the FOIA Officer there in an effort to help expedite the DOE's required determination on its FOIA requests. As of the date that this action was filed, however, Plaintiff Citizen Action had not received notice of any determination on any of its three outstanding FOIA requests, nor has it received any of the agency records sought in those requests.

V. CAUSE OF ACTION

11. The FOIA, 5 U.S.C. § 552(a)(6)(A)(i) requires any agency to which a FOIA request has been made to make a determination on the request within twenty working days, and to immediately notify the person making the request of the determination and the agency's reasons for the determination.

12. The FOIA requires the Defendant to provide the records that the Plaintiff requested and Defendant has failed to do so. The FOIA requires the Defendant to make a determination on Plaintiff's request within twenty working days and to provide the requested information and Defendant has failed to do so.

VI. CLAIM FOR RELIEF

13. Because of these violations, Defendant has improperly withheld agency records from Plaintiff in violation of the FOIA within the meaning of 5 U.S.C. § 552(a)(4)(B).

14. Plaintiff is adversely affected by Defendant's failure to provide the required information under the FOIA because without that information Plaintiff cannot inform the public concerning the subject of the request, which will contribute significantly to the public's understanding of the operations or activities of the government.

15. 5 U.S.C. § 552(a)(6)(C) states in relevant part that: "Any person making a request to any agency for records . . . shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph."

16. The FOIA gives this court jurisdiction to order Defendant to provide Plaintiff with the records he has requested pursuant to 5 U.S.C. § 552(a)(4)(B).

17. This court may assess reasonable attorneys fees against the United States if the Plaintiff substantially prevails in this action pursuant to 5 U.S.C. § 552(a)(4)(E).

VII. REQUEST FOR RELIEF

18. FOR THESE REASONS, Plaintiff respectfully requests that this court enter judgment providing the following relief:

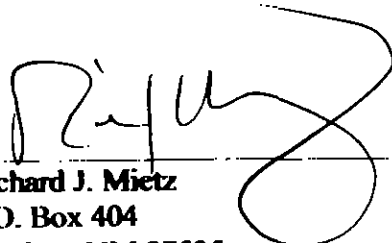
a. Declare that Defendant UNITED STATES DEPARTMENT OF ENERGY has improperly withheld agency records from Plaintiff by: 1) failing to provide the requested information, and 2) failing to comply with the procedural time limits established by the FOIA;

b. Direct by injunction that the Defendant immediately provide Plaintiff with the records it has requested;

c. Grant Plaintiff its costs of litigation, including reasonable attorneys fees as provided by the FOIA, 5 U.S.C. § 552(a)(4)(E); and

d. Provide such further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 11th day of August, 2006.



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